Supreme Court, U.S.
FILED

Docket No. 05-792 DEC 2 5 2005

OFFICE OF THE CLERK

UNITED STATES SUPREME COURT

Lenard A. Footland, Petitioner, *pro se*

v.

Donald L. Evans, Secretary of Commerce, *et al.*, Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

Petition for Writ of Certiorari

Lenard A. Footland, Petitioner, *pro se*
833 South 25th Street
Arlington, Virginia 22202
703-308-2683 (w)
703-684-9169 (h)

Questions Presented For Review

1. Is a program of race and gender preferences in hiring and promotion in the federal Civil Service a corrupt violation of the civil service laws, and race and gender discrimination in violation of the Civil Rights Act of 1964 and the Due Process Clause of the 5th Amendment, where there are no facts that could possibly pass strict scrutiny, and the Defendant admits in his Answer (paragraphs 84 and 85) that there is no possible legal justification for such preferences?

2. Is a summary judgment against the Plaintiff justified where he has presented documentary admissions of the Patent Office wherein the Patent

Office has an express program of race and gender preferences, with quotas, wherein he has shown that in selections for Administrative Patent Judge selections three out of four minorities and/or females have been selected, all with the lowest scores of anyone selected, while 12 Caucasian males with higher ranking scores, including Plaintiff, have been passed over for selection; wherein pursuant to said program the percentage of Caucasian male patent examiners, 76% of the labor pool, has dropped from 50 to 36%, where there is a written rating system for managers providing that they can be fired for failure to give preference to minorities and females in hiring and promotion; where Caucasian males are actionably

underrepresented in every category of Patent Office employment; where Patent Office personnel, from the Commissioner to almost all persons involved in the selection process admit that "promoting diversity" means factoring race and gender preferences into all phases of the selection process; and where the selecting official has repeatedly committed perjury and criminal acceptance of documents as legitimate that he knew to be invalid, and where the selecting official has admitted that his pretext for not selecting the Plaintiff was false?

3. Should the Plaintiff's motion for summary judgment have been granted because the above facts precluded any possibility of a selection process "free from discrimination" as required by the Civil Rights Act of 1964?

List of All Parties

Plaintiff pro se: Lenard A. Footland

Defendants: Donald E. Evans, Secretary of Commerce; George W. Bush, President (originally William Clinton); Jon Dudas, Director, U.S. Patent & Trademark Office ("USPTO"); William Stoner, Chief Administrative Patent Judge, USPTO.

Table of Contents

Questions Presented For Review - pp i-iii?

List of All Parties – p 1

Table of Contents – p 2

Table of Cited Authorities- p 3

Citations of Official and Unofficial Reports of the Opinions and Orders Entered in the Case by Courts or Administrative Agencies – p 4

Concise Statement of the Basis for Jurisdiction in This Court – p 5

Constitutional Provisions, statutes, Ordinances Involved in the Case – pp 6-7

Concise Statement of the Case – p 8-10

Direct and Concise Argument Amplifying the Reasons Relied on for Allowance of the Writ – pp 11-14

Appendix – pp 15-16

Table Of Cited Authorities

Adarand Constructors, Inc. v. Pena, 115 S.Ct. 2097, 515 U.S. 200 (1995)

Grutter v. Bollinger et al., 000 U.S. 02-241 (2003)

Citations of Official and Unofficial Reports of the Opinions and Orders Entered in the Case by Courts or Administrative Agencies

Transcript of oral opinion of February 5, 2003 by District Judge Ellis in support of summary judgment against Plaintiff (not including ruling on Plaintiff's Motion for Finding of Facts).

Unpublished Opinion, *Footland v. Evans, et al.*, No. 04-1171, 4th Circuit Court of Appeals, August 10, 2004.

Judgment on Rehearing in the above, denied by the 4th Circuit Court of Appeals En Banc, October 27, 2004.

Transcript of opinion and judgment against Plaintiff in EEOC hearing dated February 22, 2000 (EEOC case No.100-99-8073-x, Agency case no's. 100-99-8073-x and 99-56-00244)

Concise Statement of the Basis for Jurisdiction in This Court

28 U.S.C. § 1254 provides that "Cases in the courts of appeals may be reviewed by the Supreme Court by ... writ of certiorari upon the petition of any party to any case ...."

Unpublished Opinion in this *Footland v. Evans, et al.*, No. 04-1171 of the 4th Circuit Court of Appeals, was entered on August 10, 2004.

Judgment on Rehearing in the above was denied by the 4th Circuit Court of Appeals En Banc on October 27, 2004 in the above appeal.

By the rules of the 4th Circuit, the time for filing certiorari is automatically extended to begin starting on the date of judgment of a petition for rehearing.

Constitutional Provisions And Statutes

Due Process Clause of the Fifth Amendment to the Constitution of the United States: "No person shall be ... deprived of life, liberty, or property ... without due process of law ...."

28 U.S.C. § 1254: "Cases in the courts of appeals may be reviewed by the Supreme Court by ... writ of certiorari upon the petition of any party to any case ...."

Civil Rights Act of 1964, Title VII, 42 U.S.C. 2000e-16(a) et seq., as amended: "All personnel actions affecting employees or applicants ... in executive agencies ... shall be made free from any discrimination based on race, color, religion, sex, or national origin."

Civil Service Reform Act , 5 U.S.C. 4301-4303:

"[A]n agency may ... remove an employee for unacceptable performance."

"'[U]nacceptable performance' means performance of an employee which fails to meet established performance standards in [any] one ... critical element of such employee's position. [Emphasis supplied.]

Concise Statement of the Case

This cause of action alleges race/natural origin and/or gender discrimination, and retaliation against the plaintiff, a Caucasian male Primary Patent Examiner at the United States Patent & Trademark Office ("Patent Office" or "PTO"), in selections of Administrative Patent Judges.

Plaintiff, a Caucasian male, presents that he was a victim of discrimination in two selection rounds in 1996[1] and 1998, most recently and distinctly involving one John Gonzales, a Hispanic male who was preferentially and illegally selected over plaintiff, a Caucasian male, pursuant to

[1] which Plaintiff prosecuted and was denied certiorari by this Court. It is part of this case as part of a pattern of practice along with the 1998 case.